

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS REVISIONAL JURISDICTION AND IN
ITS REVISIONAL APPELLATE JURISDICTION

1976
Jan. 24
—
ALECOS
CONSTANTINIDES
v.
CYPRUS TELE-
COMMUNICATIONS
AUTHORITY

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALECOS CONSTANTINIDES,

Applicant,

and

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

(Case No. 61/72).

Administrative Law—Administrative Organ—Competence—Must necessarily be provided for either by some provision of the Constitution or of a law or an administrative act based on the authorization of a law—Decision refusing to transmit a cable—Organ taking such decision having no competence under any of above prerequisites—Said decision declared null and void as taken by an organ having no competence in the matter.

Telecommunications—Cable—Refusal to transmit a cable—Taken by an organ, the Cyprus Telecommunications Authority, who had no competence in the matter—Declared null and void.

International Telecommunications Convention of Geneva, 1959 Article 31—International Telecommunication Convention of Montreux (1965) Article 32—Right to stop transmission of telegrams thereunder—Is reserved to the member states and not to the Telecommunications Authorities or particular organs of the member states—International Telecommunications Conventions and Relevant Protocols (Ratification) Law, 1971 (Law 21 of 1971), Telegraphs Law, Cap. 305 section 6 and Article 169 of the Constitution.

The applicant, a professional journalist and the correspondent of the French News Agency, called at the office of the respondent Authority on the 2nd February, 1972, at 1.30 a.m. and handed in a cable* for transmission to the said Agency at Beirut. The General Manager of the Authority decided that the cable could not be transmitted on account of its contents. Applicant was informed of the refusal by phone on the same day; and by letter of the following day he was informed that the decision was taken in accordance with Article 31** of the International Telecommunications Conventions of Geneva 1959. 5 10

Hence the present recourse.

Held (1) that the right to stop the transmission of private telegrams is under the said Article 31, Article 32 of the International Telecommunication Convention of Montreux (1965) and section 6 of the Telegraphs Law, Cap. 305, given to the Council of Ministers and not to the respondent Authority. 15

(2) That in the absence of any direct authorization to the respondent Authority or any of its officers to stop transmission of cables given by a law or by a decision of the Council of Ministers taken either under section 6 of Cap. 305 (*supra*) or under the Statutory Functions (Conferment of Exercise) Law, 1962 (Law 23/62), the respondent Authority acted without competence in the matter. 20

(3) That the competence of an organ must necessarily be provided for by some provision either of the Constitution or of a law or an administrative act based on the authorization of a law; that as none of these prerequisites exist in the present case the *sub judice* decision was taken by an organ having no competence in the matter; and that, accordingly, it should be declared as null and void. 25 30

Sub judice decision annulled.

Recourse.

Recourse against the refusal of the respondent to transmit a cable to the French News Agency at Beirut.

K. Talarides, for the applicant 35

A. HjiIoannou, for the respondent.

Cur. adv. vult.

* Quoted in full at p. 3 *post*.

** Quoted at p. 5 *post*.

The following judgment was delivered by:

A. LOIZOU, J.: This recourse is against the decision of the respondent Authority of the 2nd February, 1972 by which they refused to transmit to the French News Agency, at Beirut, a cable of the same date.

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The applicant is a professional journalist and the correspondent of the said Agency. In the exercise of his professional duties to inform the public about current events, as stated on his behalf, he called at the office of the respondent Authority on the 2nd February, 1972, at 1. 30 a.m. and handed in the cable in question (*exhibit 2*) which reads as follows:—

“ A force of five hundred armed policemen was sent Tuesday night to Mitsero area, 30 kilometres from Nicosia, where they started large scale operations to find members of clandestine groups, according to police sources Stop policemen established barricades in area and till now have arrested three persons Stop one of the persons arrested was, according to police communique, armed with automatic Quote Thomson Unquote Stop meantime, daily Greek Cypriot Quote Mesimvrini Unquote reports today that a large quantity of arms, about five thousand were imported secretly to Cyprus Sunday, destined for paramilitary groups Stop according to other sources arms are destined for Greek Cypriot police that President Makarios wishes reinforce to counterbalance power of National Guard—Greek Cypriot Army—which is under control of Greek officers Stop End Constantinides”.

In the afternoon of the same day the applicant was informed by one of the employees of the respondent Authority, by phone, that his cable would not be transmitted, on account of its contents. The decision had been taken by the General Manager of the respondent Authority and was, on the following day, communicated by letter to him. By the said letter the applicant was informed that this telegram—in view of the nature of its context—had not been transmitted to its destination, the Authority acting in accordance with the International Telecommunications Convention, Article 31(258. 1) (*exhibit 1*).

The police bulletin of the 2nd February, 1972 (*exhibit 8*) announced that C.I.D. men arrested, in the area of Mitsero, a resident of Morphou who had in his possession an automatic “Thompson” sub machine gun and three full magazines, one

loaded revolver and 13 rounds of ammunition. This, to some extent, substantially coincides with the first part of the cable, the second part of it was news that had been published in the newspaper "Mesimvrini" of the 2nd February, 1972 (*exhibit 10*). The news contained in *exhibit 2* were published on the 3rd February, in the local newspapers "Eleftheria" and "Patris", (*exhibits 11 and 12*) and two Athenian newspapers, "Eleftheros Cosmos" and "Acropolis" (*exhibits 13 and 14*). No official communique was issued by the Government, but, later, on the 31st May, 1972, the Secretary-General of the United Nations confirmed the importation of guns and ammunition by the Government of Cyprus in January, 1972 and remarked that it was one of the major factors which contributed to the increase of the intercommunal tension. On the 3rd February, 1972 the news were disseminated, in some form or other, by other foreign broadcasting stations, and this, as counsel for the applicant put it, has relevance as to whether the prevention of the applicant to transmit this telegram was in fact motivated by the provision of the Convention and whether it was reasonably justified.

According to the respondent Authority, it was the last part of the telegram that influenced the mind of the General Manager. The reference to the Greek officers and the Government of Cyprus and taking into account the delicate position which existed at the time, it has been asserted on behalf of the respondent Authority that it was prudent on its part not to accept to transmit it, as it was a matter relating to question of public order and security as there might be misunderstandings between the Greek officers and the Government of Cyprus.

The International Telecommunications Convention of Geneva, its annexes and protocols thereto and the International Telecommunication Convention of Montreux (1965) together with its annexes and protocols thereto, as well as the additional optional protocols of Montreux, were signed under a decision of the Council of Ministers and became operative and binding on the Republic having been approved by law, i.e. The International Telecommunications Conventions and Relevant Protocols (Ratification) Law, 1971 (Law 21/71).

Under Article 169.3 of the Constitution,

"Treaties, Conventions and Agreements concluded in accordance with the foregoing provisions of the said Article"—and there is no question that the said Treaties were

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not but so concluded—"shall have, as from their publica-
tion in the official Gazette of the Republic, superior force
to any municipal law on condition that such Treaties, Con-
ventions and Agreements are applied by the other party
thereto".

Article 32 of the Montreux 1965 Convention which is identical
to Article 31 of the Geneva 1959 Convention, and on which the
respondent Authority relied for the taking of the *sub judice*
decision, reads as follows:

10 "1. Members and Associate Members reserve the right
to stop the transmission of any private telegram which may
appear dangerous to the security of the State or contrary to
their laws, to public order or to decency, provided that they
immediately notify the office of origin of the stoppage of
15 any such telegram or any part thereof, except when such
notification may appear dangerous to the security of the
State.

20 2. Members and Associate Members also reserve
the right to cut off any other private telecommunications
which may appear dangerous to the security of the State or
contrary to their law, to public order or to decency".

From its wording, it is clear that the right to stop the transmis-
sion of private telegrams, etc. is reserved to the Members and
Associate Members of the Union, which, as defined in Article 1
25 of the Convention, are the countries or group of territories, etc.
that signed or acceded to the Convention and not the Telecom-
munication Authorities or particular organs of the Member
States; in other words, it is a reservation for the exercise of exe-
cutive power by the Member States as such. This Convention,
30 therefore, in the light of the provisions of Article 169 of our
Constitution, has superior force to any municipal law, on ac-
count of its approval by law and the publication of same in the
official Gazette. As such, it may be said, though the point
need not be decided in this case, that it constitutes an authori-
35 zation to that effect, to the appropriate organ of the State
entrusted with the exercise of executive power, since same is
not specifically given to any other organ. It may also be said,
that it preserves existing legislation dealing with the matter in
question supplemented or modified, as the case may be, by the
40 provisions of this law having superior force, or in the last ana-
lysis, it reserves the right to the member State to regulate the

matter by legislation conforming with its provisions, if such legislation does not already exist.

I shall proceed, therefore, to examine whether the organ that took the *sub judice* decision had competence in the matter, on the assumption that this provision of the said Treaty empowers the stoppage of the transmission of cables and is binding upon the citizens, Courts, officials and the states, without, however, testing its force, in the light of the provisions of our Constitution, and in particular Article 17 thereof invoked by the applicant. This, I do, for the reasons that I am about to give, particularly so, the lack of competence on the part of the organ that took the *sub judice* decision, renders unnecessary the determination of this and the remaining grounds of law relied upon by the applicant in support of his application.

The functions, duties and powers of the respondent Authority are set out in the Inland Telecommunications Service Law, Cap. 302, as amended. The only statutory provision, apart from the aforesaid Article of the Convention, to which I have been referred by counsel as generally authorizing the stoppage of the transmission of cables, is section 6 of the Telegraphs Law, Cap. 305, as amended, which, to the extent that is relevant, reads:

- “ 6(1) On any public emergency or in the public interest the Governor or any person authorized generally or specially in this behalf by the Governor, may –

 - (a)
 - (b) order that any telegram or class of telegrams to or from any person or class of persons, or relating to any particular subject brought for transmission by or transmitted or received by any person or telegraph company licensed under this Law or a telegraph officer, shall not be transmitted or shall be intercepted or detained or shall be disclosed to the Governor or any person designated by name or office in the order; or
 - (c)

The reference to “the Governor” in the aforesaid section, should, under Article 188.3(b) of the Constitution dealing with transitional powers, be construed as a reference to the Council of Ministers, as it is a matter relating to the exercise of executive power. It should be further pointed out that the power to

stop the transmission, intercept or detain a telegram, is given by the aforesaid provision to the Council of Ministers and not to the respondent Authority or any of its officers. As already pointed out, this power is vested in the Council of Ministers, both under the said Treaty and under the aforesaid statutory provision, and in the absence of any direct authorization to the respondent Authority or any of its officers by law; to stop the transmission of a cable in circumstances as those referred to above, it has to be examined if there has been any authorization to that effect, given by the Council of Ministers either under the provisions of section 6 hereinabove set out, or under the Statutory Functions (Conferment of Exercise) Law, 1962 1962 (Law 23/62).

It has been claimed that such authorization or delegation of power has been given by the Council of Ministers as far back as 1965. Learned counsel for the respondent Authority has invited me to deduce this authorization or delegation from the following circumstances:

On the 22nd March of that year, the respondent Authority asked the Council of Ministers through the Director-General of the Ministry of Works and Communications (*exhibit 20*) to approve a Regulation under section 12(1)(e) of the Geneva Convention of 1959. The reply to the said request is to be found in Decision No. 4773 of the 10th June, 1965 of the Council of Ministers, attached to the letter of the 16th July, 1965 (*exhibit 1*) addressed to the respondent Authority by the Director-General, Ministry of Communications and Works. It reads:

“ Regulations prohibiting the dispatch of telegrams dangerous to the security of the Republic

24. The Council considered the draft Telecommunications Service Regulations enclosed with the Submission as Appendix ‘C’ which was designed to stop the transmission of private telegrams which may appear dangerous to the security of the Republic, etc., and decided that the said Regulations should not be made since, according to the advice of the Attorney-General of the Republic, provision for stopping such telegram already exists in Article 31 of the International Communication Convention which has been acceded to by the Republic.”

Needless to point out that the Convention to which the Republic has acceded in 1961, had not until then been approved by a municipal law.

It is obvious from the request made and the wording of the aforesaid decision, that it was never meant and cannot be taken to be a conferment by the Council of Ministers, of the exercise of its statutory powers on the respondent Authority or any of its officers. It is, only, in my view, an ascertainment on the basis of legal advice that there already existed a statutory provision for stopping such telegrams, a view, with which, I respectfully disagree, for the reasons that I have already given. Because of this ascertainment it was found unnecessary to approve the enactment of the regulation applied for, but this cannot be taken to amount to such an authorization or delegation of power.

Therefore, as the competence of an organ must necessarily be provided for by some provision either of the Constitution or of a law or an administrative act based on the authorization of a law, and as none of these prerequisites exists, in the present case, I have come to the conclusion that the *sub judice* decision was taken by an organ having no competence in the matter and, therefore, it should be declared as *null* and *void*.

For the aforesaid reasons the present recourse succeeds and the respondent Authority is ordered to pay £25.— as against applicant's costs.

*Sub judice decision annulled.
Order for costs as aforesaid.*